application of the second amendment to the States. But in that footnote, the Court made it quite clear that the prior old cases were decided before it had adopted a different approach to incorporating constitutional rights against the States. It is pretty clear from that they have left this matter open. The judge on the Ninth Circuit found that the question was an open question after Heller.

To say it is ''settled law'' that the second amendment does not apply to the States is not good, in my view. It is not settled law. I would certainly hope, and millions of Americans will be hoping, that the Supreme Court will not rewrite the Constitution; rather, they hope they will declare that the second amendment does apply to the States.

Further, she said it was not a fundamental right. That was not a phrase used by the other two courts which considered this question, and it is gratuitous, in my opinion. The combination of saying it is not a fundamental right, which is important to the ultimate analysis, and her statement that it is ''settled law'' that the second amendment does not apply to the States indicates a lack of appreciation for the importance of the second amendment right and a hostility toward the second amendment.

And similarly troubling were the judge's equivocations as to whether she would appropriately recuse herself from considering this issue that will surely come before her on the Supreme Court. She declined to commit to recusing herself if the Seventh or Ninth Circuit cases came to the Court, even though those cases raise exactly the same issue as the one she decided against gun rights. I would note also that even the Heller case—breathtaking to me—decided by a narrow vote of 5–4 that a right to keep and bear arms provided in the Constitution explicitly applies to bar the city of Washington, DC, from banning all firearms, basically.

In addition to the firefighters case and the second amendment case, both of which involve important issues of constitutional law, Judge Sotomayor handled, in a similarly cursory manner, a very important private property rights case which some have called the most egregious property rights decision in this area since the Supreme Court's infamous decision in the Kelo case a few years ago.

Just 3 years ago, after Kelo was decided, which caused quite a storm of controversy and a great deal of academic writing, Judge Sotomayor's court issued an opinion in which a private property owner found his property, on which he planned to build a CVS pharmacy, taken by condemnation by the city so that another private developer could build a Walgreen's on the same property. The way this condemnation came about should send chills down the spines of ordinary Americans, because the Walgreen developer, who was pursuing a redevelopment plan supported by the city, told the landowner that he could keep his land and build a CVS and they wouldn't condemn it. All he had to do was fork over $800,000 or half ownership in his business. I look at that and I can understand why the landowner thought he was being blackmailed. Judge Sotomayor looked at that and called it business as usual—a simple negotiation. But it is no negotiation when one party possesses the power through the city to take your property, whether you agree or not.

In another curiously short 2-page opinion, Judge Sotomayor's court rejected the landowner's claims, holding that the courtroom doors were closed to the landowner because he had brought his claim too late. The logic was that the landowner had to bring his claim to court months before the extortion occurred. The effect was to violate the Constitution. The Constitution plainly states that property ''shall not be taken for public use without just compensation.'' The Supreme Court has been quite clear that means you can't take private property except for public use.

At Judge Sotomayor's hearing, Professor Ilya Somin, who has written extensively on property matters, said this case was the most anti-property rights case since the infamous Kelo decision decided by a split Court a few years ago. Again, plain constitutional protections were ignored to the detriment of an individual American citizen who was standing up for his constitutional rights.

So in three cases, contrary to the plain text of the Constitution, Judge Sotomayor has ruled against the individual and in favor of the State in the face of seemingly clear provisions of the Constitution, furthering what can be fairly said to be, in each case, a more liberal agenda in America. A liberal or a conservative political belief, a Republican or Democratic political belief does not disqualify someone from serving on the Supreme Court. What does disqualify is when a judge allows such beliefs or ideology or opinions to impact decisions that they make in cases.

Anyone with more than a casual acquaintance with the law would instantly know that each of these three cases presented issues of great legal importance, and each deserved to be treated with great thoughtfulness. Judge Sotomayor surely understood that fact. Yet in each instance her decisions were unacceptably short. It seemed to me the only consistency in them was that the result favored a more liberal approach to government.

So I have come to announce, regretfully, that I cannot support Judge Sotomayor's elevation to our highest Court. She also now sits in a lifetime appointment on the Nation's second highest court, the Court of Appeals. Her experience, however well rounded, and background, however inspirational, are not enough. What matters is her record on the bench and her stated judicial philosophy.

I hope I am wrong, but my best judgment, my decision is that a Sotomayor vote on the Court—the Supreme Court—will be another vote for the new kind of ideological judging, not the kind of objectivity and restraint that have served our legal system in our Nation so well. Thus, I am unable to give my consent to this nomination.

Madam President, I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

MORNING BUSINESS

Mr. HARKIN. Madam President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICANS WITH DISABILITIES ACT

Mr. HARKIN. Madam President, yesterday, July 26, marked the 19th anniversary of the signing of the Americans with Disabilities Act by President George Herbert Walker Bush, on July 26, 1990. Passage of that law was a great national achievement. I remember being there. I was the chief sponsor of the bill. I was at the White House when it was signed. It was a beautiful sunny day. More people were on the White House lawn for the signing of that bill than for the signing of any bill in the history of this country. It was huge. It was a wonderful day. It was one of the landmark civil rights bills of our generation—of the 20th century.

Passage of the original Americans with Disabilities Act was a bipartisan evident. As the chief sponsor of that bill, I worked very closely with Senator Dole. Of others on the other side of the aisle, two come to mind: Senator Orrin Hatch, who worked very closely with us to get it through, and also Senator Lowell Weicker, of Connecticut. Senator Weicker was the first proponent of the Americans with Disabilities Act, but by the time we were able to get it passed, he was no longer in the Senate. But Senator Weicker did yeoman's work in getting it going and pulling everything together before he left the Senate.

We received invaluable support from President Bush and key members of his administration. I mention, in particular, White House Counsel Boyden Gray, Attorney General Richard Thornburgh, and Transportation Secretary Samuel Skinner.

We look back, after 19 years, and what do we see? We see amazing progress. Thanks to the Americans with Disabilities Act, or the ADA as we call it, streets, buildings, and transportation are more accessible for people with physical impairments. Information is offered in alternative formats so